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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,052	06/07/2002	Klaus Hamprecht	WWELL59.001APC	5162
20995	7590	08/17/2005	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP				BECKER, DREW E
2040 MAIN STREET				ART UNIT
FOURTEENTH FLOOR				PAPER NUMBER
IRVINE, CA 92614				1761

DATE MAILED: 08/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/018,052	JAHN ET AL.	

  

<b>Examiner</b>	<b>Art Unit</b>	
Drew E. Becker	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 02 June 2005.

2a) This action is FINAL.                  2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 72-95 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 72-95 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 72-95 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitaker et al [Pat. No. 2,388,103] in view of Budzyna et al [Pat. No. 5,154,940].  
Whitaker et al teach a method and device for treating milk including rotating a milk container at about 50-200 rpm (page 2, column 2, line 9), the milk inherently forming film on the inner wall due to the container not being filled (page 1, column 2, line 48), heating the milk while it rotates with a first heat source for 3-5 minutes (page 2, column 1, lines 20-30 & 71), heating the milk with a second heat source (page 2, column 2, line 56), a source of cooling water at 60°F for about 4 minutes (page 2, column 2, line 61), a chamber with an opening (Figure 1, #10), the container being a glass flask (Figure 1, #23), and a receptacle (Figure 1, #22). Whitaker et al do not recite the first heat source being hot air, the second heat source being ambient air, the second time being less than 15 seconds, and a temperature probe. Budzyna et al teach a method and device for treating food in containers by heating the containers for a first time period with hot air (column 7, lines 35-57), heating the containers for a second period with ambient air for 5 seconds (column 12, lines 4-15), and temperature probes (Figures 1 & 3, #29 & 106). It would have been obvious to one of ordinary skill in the art to incorporate the hot air,

ambient air, and temperature probes of Budzyna et al into the invention of Whitaker et al since both are directed to methods of heating foods in rotating containers, since Whitaker et al already included steam heating which is a mixture of heater water and air (page 2, column 1, line 73), since Whitaker et al already included secondary and even tertiary heating steps (page 2, column 2, lines 52-66), since the hot and ambient air of Budzyna et al would have eliminated the need for water lines and pressurized air that were needed to create the steam of Whitaker et al, and since the temperature probes of Budzyna et al provided an effective means for controlling heating and cooling of the container (column 11, lines 16-37).

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Dumm [Pat. No. 6,276,264] teach a method and device for heating milk in a container.

#### ***Response to Arguments***

4. Applicant's arguments with respect to claims 72-95 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Drew E Becker  
Primary Examiner  
Art Unit 1761

*Drew Becker*  
**DREW BECKER**  
**PRIMARY EXAMINER**  
*8-5-05*